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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:  
12 **NANCY AGUILAR JOVET, aka**  
**NANCY AGUILAR, aka**  
13 **NANCY CATHERINE AGUILAR, aka**  
**NANCY CATHERINE WHITEHEAD, aka**  
14 **NANCY CATHERINE THOMAS**  
3827 Apache Ave.  
15 Bakersfield, CA 93309

16 Registered Nurse License No. 317650  
Nurse Practitioner License No. 7479  
17 Nurse Practitioner Furnisher License No. 7479

18 Respondent.

Case No. 2010-32

**A C C U S A T I O N**

19 Complainant alleges:

20 **PARTIES**

21 1. Complainant Heidi J. Goodman, Assistant Executive Officer, brings this  
22 Accusation solely in her official capacity as the Executive Officer of the Board of Registered  
23 Nursing ("Board"), Department of Consumer Affairs.

24 **License History**

25 2. On or about August 31, 1980, the Board issued Registered Nurse License  
26 Number 317650 ("license") to Nancy Aguilar Jovet, also known as Nancy Aguilar, Nancy  
27 Catherine Aguilar, Nancy Catherine Whitehead, and Nancy Catherine Thomas ("Respondent").  
28 The license will expire on September 30, 2010, unless renewed.

3. On or about March 20, 1985, the Board issued Nurse Practitioner License Number 7479 ("license") to Respondent. The license will expire on September 30, 2010, unless renewed.

4. On or about June 24, 2004, the Board issued Nurse Practitioner Furnisher License Number 7479 (“license”) to Respondent. The license will expire on September 30, 2010, unless renewed.

## JURISDICTION

5. Section 2750 of the Business and Professions Code (“Code”) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

6. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

7. Code section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

## 8. DRUGS

“**Maxalt,**” a brand name for Rizatriptan and a dangerous drug within the meaning of Code section 4022, in that it requires a prescription under federal law.

“Trazadone,” a brand name for Desyrel and a dangerous drug within the meaning of Code section 4022, in that it requires a prescription under federal law.

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1           “Tylenol #3,” is a compound consisting acetaminophen and codeine, a Schedule  
2 III controlled substance, as designated by Health and Safety Code section 11056, subdivision  
3 (e)(2).

#### 4                                   **STATUTORY PROVISIONS**

5           9.       Code section 2761 states, in pertinent part:

6                   The board may take disciplinary action against a certified  
7 or licensed nurse or deny an application for a certificate or license  
8 for any of the following:

9                   (a)     Unprofessional conduct, . . .

10                  (f)     Conviction of a felony or of any offense substantially  
11 related to the qualifications, functions, and duties of a registered nurse, in  
12 which event the record of the conviction shall be conclusive evidence  
13 thereof.

14           10.     Code section 2762 states, in pertinent part:

15                   In addition to other acts constituting unprofessional  
16 conduct within the meaning of this chapter [the Nursing Practice  
17 Act], it is unprofessional conduct for a person licensed under this  
18 chapter to do any of the following:

19                   (a)     Obtain or possess in violation of law, or prescribe,  
20 or except as directed by a licensed physician and surgeon, dentist,  
21 or podiatrist administer to himself or herself, or furnish or  
22 administer to another, any controlled substance as defined in  
23 Division 10 (commencing with Section 11000) of the Health and  
24 Safety Code or any dangerous drug or dangerous device as defined  
25 in Section 4022.

26                   (b)     Use any controlled substance as defined in Division 10  
27 (commencing with Section 11000) of the Health and Safety Code, or any  
28 dangerous drug or dangerous device as defined in Section 4022, or  
alcoholic beverages, to an extent or in a manner dangerous or injurious to  
himself or herself, any other person, or the public or the extent that such  
use impairs his or her ability to conduct with safety to the public the  
practice authorized by his or her license.

                 (c)     Be convicted of a criminal offense involving the  
prescription, consumption, or self-administration of any of the substances  
described in subdivisions (a) and (b) of this section, or the possession of,  
or falsification of a record pertaining to, the substances described in  
subdivision (a) of this section, in which event the record of the conviction  
is conclusive evidence thereof.

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1                   11.     Health and Safety Code Section 11173, subdivision (a), provides that no  
2 person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure  
3 the administration of or prescription for controlled substances, (1) by fraud, deceit,  
4 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

5                                   **COST RECOVERY**

6                   12.     Code section 125.3 provides, in pertinent part, that the Board may request  
7 the administrative law judge to direct a licensee found to have committed a violation or  
8 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
9 and enforcement of the case.

10                                   **FIRST CAUSE FOR DISCIPLINE**

11                                   **(Criminal Conviction)**

12                   13.     Respondent is subject to disciplinary action under Code section 2761,  
13 subdivision (f), in that on or about October 2, 2008, in the Superior Court of California, County  
14 of Kern, in the case entitled, *People of the State of California v. Nancy Aguilar Jovet* (Super Ct.  
15 Kern County, 2008, Case No.BF124592A), Respondent was convicted on her plea of nolo  
16 contendere to a lesser crime of violating Health and Safety Code section 11173, subdivision (a)  
17 with Penal Code section 17 (Obtained a Controlled Substance by Fraud, Deceit, and  
18 Misrepresentation), a misdemeanor. The circumstances of the crime are that on or about August  
19 17, 2007, Respondent did willfully and unlawfully obtain or attempt to obtain a controlled  
20 substance, to wit: Maxalt, Trazodone, and Tylenol #3, and did procure and attempt to procure the  
21 administration of or prescription by fraud, deceit, and misrepresentation.

22                                   **SECOND CAUSE FOR DISCIPLINE**

23                                   **(Criminal Conviction Involving Obtaining a Controlled Substance and/or Drugs)**

24                   14.     Respondent is subject to disciplinary action under Code section 2761,  
25 subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762,  
26 subdivision (c), in that Respondent was convicted of a crime involving obtaining a controlled  
27 substance by a fraudulent prescription, as set forth in paragraph 13, above.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Obtained and Self-Administered a Controlled Substance and/or Drugs)**

3 15. Respondent is subject to disciplinary action under Code section 2761,  
4 subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762,  
5 subdivisions (a) and (b), in that while licensed as a registered nurse, Respondent committed the  
6 following acts:

7 a. On or about August 17, 2007, Respondent obtained Tylenol #3 for her  
8 husband, Gerald Whitehead, and Maxalt and Trazadone for herself by calling in fraudulent  
9 prescriptions to Walgreens Pharmacy in Bakersfield, California, using Dr. Ndukwa Odeluga's  
10 DEA number without lawful authorization and at a time she no longer worked with Dr. Odeluga  
11 who was her collaborating physician when she was employed as a nurse practitioner and  
12 assigned to work at Taft Correctional Institution.

13 b. On or about August 17, 2007, Respondent self-administered Maxalt and  
14 Trazadone, a controlled substances, without lawful authority.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
17 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

18 1. Revoking or suspending Registered Nurse License Number 317650 issued  
19 to Nancy Aguilar Jovet, also known as Nancy Aguilar, Nancy Catherine Aguilar, Nancy  
20 Catherine Whitehead, and Nancy Catherine Thomas;

21 2. Ordering Nancy Aguilar Jovet, also known as Nancy Aguilar, Nancy  
22 Catherine Aguilar, Nancy Catherine Whitehead, and Nancy Catherine Thomas, to pay the Board  
23 the reasonable costs of the investigation and enforcement of this case, pursuant to Code section  
24 125.3; and,

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3. Taking such other and further action as deemed necessary and proper.

DATED: 7/22/09

  
HEIDI J. GOODMAN  
Assistant Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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